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7 UNITED STATES DISTRICT COURT
8
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 PERIENNE DE JARAY,

11 Plaintiff,

12 v.

13 ATTORNEY GENERAL OF CANADA
FOR HER MAJESTY THE QUEEN,
14 CANADIAN BORDER SERVICES
AGENCY, GLOBAL AFFAIRS CANADA
15 fka DEPARTMENT OF FOREIGN
AFFAIRS AND INTERNATIONAL
TRADE CANADA, GEORGE WEBB,
16 KEVIN VARGA, and PATRICK LISKA,

17 Defendants.
18

No.: 2:16-cv-00571

PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR EXTENSION OF TIME
TO RESPOND TO DEFENDANTS'
MOTION TO DISMISS

19 **REPLY IN SUPPORT OF MOTION FOR EXTENSION**

20 Defendants have taken an unreasonable position. There is no good
21 reason to oppose an extension of time so that the parties and the Court can
22 fairly address the need for discovery.
23

24 Plaintiff first attempted to seek discovery in advance of Defendants'
25 motion to dismiss,¹ and Defendants opposed that attempt, arguing that the

26 ¹ Plaintiff's Motion for FRCP 16 Status Conference and Permission to Engage in

1 motion was premature.² Defendants insisted that Plaintiff wait until the
 2 motion to dismiss was filed before requesting discovery.³ They also refused to
 3 disclose the factual basis for the motion on grounds of work product.⁴
 4 Defendants wrote in their opposition to the earlier motion for discovery: “The
 5 Court should deny the motion [for discovery], with leave for plaintiff to refile
 6 once Defendants have filed their motions to dismiss, if plaintiff can properly
 7 identify and adequately support the relief she requests.”⁵ They also wrote:
 8 “Plaintiff should wait to see defendants’ motions to dismiss and then articulate
 9 what discovery is appropriate, if any[].”⁶ They further wrote: “The time to
 10 consider any discovery issues pertaining to that briefing [on the motion to
 11 dismiss] is after the briefs are filed, and plaintiff can articulate what she needs
 12 and why it is appropriate.”⁷

13 The Court denied Plaintiff’s request for discovery, but instructed Plaintiff
 14 to “move at a later date to request that discovery and an extension of the
 15 deadline to respond to the Rule 12 motions.”⁸

16 Plaintiff followed the Defendants’ proposal and the Court’s instruction.
 17 Within one week after the Rule 12 motion was filed, Plaintiff moved for the
 18 extension. She also began preparing her motion for discovery and the

19 Discovery in FRCP 26(f) [Dkt. No. 15].

20 ² Defendants’ Opposition to Motion to Set FRCP 16 Conference and to Open Discovery
 21 [Dkt. No. 17].

22 ³ *Id.* at pp. 1, 8, 9.

23 ⁴ *Id.* at p. 9.

24 ⁵ *Id.* at p. 1.

25 ⁶ *Id.* at p. 8.

26 ⁷ *Id.* at p. 9.

⁸ Order Denying Plaintiff’s Motion for FRCP 16 Status Conference and Early Discovery
 at p. 3 [Dkt. No. 21].

1 proposed discovery requests in response to the factual assertions disclosed for
 2 the first time in Defendants' motion to dismiss. Now, Defendants argue that
 3 Plaintiff's request for discovery comes too late. Defendants' position is
 4 unreasonable in light of Plaintiff's earlier attempts to raise this issue with the
 5 Court.

6 Plaintiff even pointed out in her earlier motion for discovery that she
 7 would be unable to get a ruling on a motion for discovery in advance of the
 8 deadline to respond to the motion to dismiss.⁹ Defendants insisted that
 9 Plaintiff nonetheless wait until the motion to dismiss was filed before
 10 addressing the need for discovery.¹⁰ Now that the motion to dismiss has been
 11 filed, Defendants assert that Plaintiff is too late in filing her motions seeking
 12 discovery and an extension of time to respond.

13 Plaintiff also warned Defendants in her earlier motion for discovery that
 14 the grounds asserted for dismissal raise questions of fact.¹¹ Case law
 15 consistently describes *forum non conveniens* as a fact-based inquiry: "[T]he
 16 district court is accorded substantial flexibility in evaluating a *forum non*
 17 *conveniens* motion, and each case turns on its facts."¹² Other federal district
 18

19 ⁹ Plaintiff's Reply in Support of Motion for FRCP 16 Status Conference and Permission
 20 to Engage in Discovery Under FRCP 26(f) [Dkt. No. 19] at p. 5 (Plaintiff "properly filed
 21 this motion in advance of Defendants' motions to dismiss because she would be
 unable to note a motion for consideration or get a ruling in advance of her deadline to
 respond to those motions to dismiss.") (citing LR 7(d)(3) and LR 7(j)).

22 ¹⁰ Defendants' Opposition to Motion to Set FRCP 16 Conference and to Open Discovery
 [Dkt. No. 17] at pp. 1, 8, 9.

23 ¹¹ Plaintiff's Reply in Support of Motion for FRCP 16 Status Conference and Permission
 24 to Engage in Discovery Under FRCP 26(f) [Dkt. No. 19] at p. 5.

25 ¹² *Van Cauwenberghe v. Biard*, 486 U.S. 517, 528, 108 S. Ct. 1945, 100 L.Ed.2d 517
 26 (1988). See also *In re Bridgestone/Firestone, Inc., ATX, ATX II and Wilderness Tires*
Products Liability Litigation, 131 F.Supp.2d 1027, 1029 (citing *Van Cauwenberghe*, 486
 U.S. at 528).

1 courts recognize that “it behooves courts to permit discovery on facts relevant
2 to *forum non conveniens* motions.”¹³ The Ninth Circuit has reversed a
3 dismissal on *forum non conveniens*, noting the trial court had denied the
4 plaintiffs the opportunity to conduct limited discovery.¹⁴ The act of state and
5 international comity analyses also require a fact-based inquiry.¹⁵ Defendants
6 even attempt in their motion to dismiss to rely on facts about the location of
7 the wrongful conduct, witnesses, and evidence, albeit without citation or any
8 affidavits in support of their factual assertions.¹⁶

9 Defendants insisted upon filing a motion asserting these grounds for
10 relief. Defendants made the choice to file their motion putting these factual
11 questions at issue and now assert that the Court should not rule on the
12 questions. Defendants have taken a heavy-handed approach to this litigation.
13 There is no good reason to oppose Plaintiff's request for an extension of time to
14 respond to Defendants' motion to dismiss.

15 Plaintiff requests that the Court stay the deadline to respond to
16 Defendants' motion to dismiss so that the Court can fairly consider the issue of
17 discovery. Plaintiff has filed her motion for leave to seek discovery, as
18 instructed in the Court's order denying her earlier motion for discovery.
19 Plaintiff also attached the discovery she proposes to issue.

CONCLUSION

Plaintiff respectfully requests that the Court stay the deadline to respond to Defendants' motion to dismiss so that the Court can fairly consider the issue

¹³ *Id.* at 1029-30.

¹⁴ *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1223 (9th Cir. 2011).

¹⁵ See Plaintiff's Motion for Leave to Seek Discovery at pp. 9-12.

¹⁶ Defendants' Motion to Dismiss [Dkt. No. 22] at pp. 21-24.

1 of discovery.

2 DATED: October 13, 2016

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